

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1995, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register.

Under the Administrative Procedure Act (A.R.S. § 41-1001 *et seq.*), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 6. ECONOMIC SECURITY

#### CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY

#### DEVELOPMENTAL DISABILITIES

#### PREAMBLE

1. **Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
Article 2	New Article
R6-6-201	New Section
R6-6-202	New Section
R6-6-203	New Section
R6-6-204	New Section
R6-6-205	New Section
R6-6-206	New Section
R6-6-207	New Section
R6-6-208	New Section
R6-6-209	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 41-1954(A)(1)(i), (A)(1)(j), and (A)(13); 46-134(12); 36-552; 36-554; and 36-596.51 through 36-596.57

Implementing statutes: A.R.S. §§ 41-1954(A)(1)(i), (A)(1)(j), and (A)(13); 46-134(12); 36-552; 36-554; and 36-596.51 through 36-596.57
3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name:	Vista Thompson Brown
Address:	Department of Economic Security 1789 West Jefferson, Site Code 837A Phoenix, Arizona 85007
or	
	P.O. Box 6123, Site Code 837A Phoenix, Arizona 85005
Telephone:	(602) 542-6555
Fax:	(602) 542-6000
4. **An explanation of the rule, including the agency's reason for initiating the rule:**

The Department is proposing a new Article of rules (Article 2, Family Support) to implement the Family Support Program mandated by A.R.S. Chapter 5.1, Article 5. The Family Support Program promotes greater decision-making opportunities for families and persons with a developmental disability. Further, it encourages the availability of choices in services, and innovation in service delivery, and gives family and individuals more authority and responsibility in determining needs and the development of the client's service plan.

The overall goal is to assist persons with developmental disabilities to live in the community with their families or in other arrangements of their choosing. Services should support individuals and their families while emphasizing the importance of natural relationships in achieving quality of life and presence in the community.

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The rules prescribe eligibility requirements, the requirements for the use of vouchers and subsidy, and a complaint process. The rules also define the responsibility of the division as the payor of last resort, the conditions for withdrawal from the program, the financial reporting requirements for participants, and the right of administrative review.

The rules were designed to clarify the statutory requirements in the least restrictive method possible in order to retain flexibility and choice for individuals with developmental disabilities and their families. In addition, family support is the most important principle in the provision of services by the division and, therefore, cannot be considered a separate program but rather a part of every activity the division performs.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

6. **The preliminary summary of the economic, small business, and consumer impact:**

The rules will have a positive but intangible economic impact on small businesses, i.e. agencies and individual providers, and consumers by describing the process for participation in the Family Support Program. Most of the agencies and individual providers involved in the provision of these services are considered small businesses. In addition, the rules will permit increased choice and decision making for the consumer.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Eileen Collieran  
Address: Department of Economic Security  
1789 West Jefferson, Site Code 791A  
Phoenix, Arizona 85007

or

P.O. Box 6123, Site Code 791A  
Phoenix, Arizona 85005

Telephone: (602) 542-6826  
Fax: (602) 542-6870

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

**PHOENIX: DISTRICT I**

Date: May 30, 1996  
Time: 1:30 p.m.  
Location: DES Conference Room  
815 North 18th Street  
Phoenix, Arizona

Coord. Program Mgr.: Vince Ornelas (255-3722)

**TUCSON: DISTRICT II**

Date: May 30, 1996  
Time: 1:30 p.m.  
Location: DES Conference Room  
815 North 18th Street  
Tucson, Arizona

Coord. Program Mgr.: Henry Granillo (628-6810)

**FLAGSTAFF: DISTRICT III**

Date: May 30, 1996  
Time: 1:30 p.m.  
Location: DES Conference Room  
220 North LeRoux  
Flagstaff, Arizona

Coord. Program Mgr.: Pam Estrella (779-2731, ext. 238)

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**YUMA: DISTRICT IV**

Date: May 30, 1996

Time: 1:30 p.m.

Location: DES Conference Room  
350 West 16th Street  
Yuma, Arizona

Coord. Program Mgr.: Tim Acuff (782-4343)

**CASA GRANDE: DISTRICT V**

Date: May 30, 1996

Time: 1:30 p.m.

Location: DES Conference Room  
2510 North Trekell  
Casa Grande, Arizona

Coord. Program Mgr.: Dan Van Keuren (723-4151)

**BISBEE: DISTRICT VI**

Date: May 30, 1996

Time: 1:30 p.m.

Location: District Conference Room  
209 Bisbee Road  
Bisbee, Arizona

Coord. Program Mgr.: Marty White (432-5703)

The Department of Economic Security (DES) follows and supports Title II of the Americans with Disabilities Act. DES does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking, or otherwise participate in the public comment process. Persons with disabilities who need accommodation (including auxiliary aids or services) to participate in the above-scheduled hearings, may contact the coordinating program managers identified above at least 72 hours before the scheduled hearing to request accommodation.

To request accommodation to participate in the public comment process, or to obtain this notice in large print, braille, or on audio tape, contact Vista Thompson Brown, at (602) 542-6555, P.O. Box 6123, Site 837A, Phoenix, Arizona 85005. TDD 1-800-367-8939.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
10. Incorporations by reference and their location in the rules:  
Not applicable.
11. The full text of the rules follows:

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY**  
**DEVELOPMENTAL DISABILITIES**

**ARTICLE 2. FAMILY SUPPORT**

<u>Section</u>	
<u>R6-6-201.</u>	<u>Family Support Program</u>
<u>R6-6-202.</u>	<u>Family Support Program Eligibility</u>
<u>R6-6-203.</u>	<u>Family Support Voucher</u>
<u>R6-6-204.</u>	<u>Family Support Subsidy</u>
<u>R6-6-205.</u>	<u>Complaints</u>
<u>R6-6-206.</u>	<u>Pavor of Last Resort</u>
<u>R6-6-207.</u>	<u>Withdrawal from Family Support Program</u>
<u>R6-6-208.</u>	<u>Financial Reporting Requirements</u>
<u>R6-6-209.</u>	<u>Right to Administrative Review</u>

**ARTICLE 2. FAMILY SUPPORT**

**R6-6-201. Family Support Program**

- A. The division provides family support as a part of the division's overall system of services and support to clients and their families.
- B. Through the family support program, the division provides those services listed in A.R.S. § 36-596.51(5)(e) and other division services if a client's ISPP team identifies additional service needs which further the objectives listed in A.R.S. § 36-596.51(5)(a), (b), (c), and (d).
- C. As a part of a client's regular and periodic ISPP process, the client's ISPP team shall evaluate the client and the client's fam-

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ily to assess the need for and the benefits of family support services.

**R6-6-202. Family Support Program Eligibility**

- A.** To qualify for family support services,
1. A client and family shall meet the eligibility criteria established in Article 3 and A.R.S. § 36-596.56; and
  2. The family shall comply with the requirements of R6-6-208.
- B.** A client's ISPP team shall assess a client's eligibility to receive family support services as follows:
1. The ISPP team identifies a service need that may be met through family support, and
  2. The ISPP team determines that the provision of the service will permit the client's family to be more involved with the client by either physical proximity or greater involvement in decisions involving the client's care.
- C.** As a condition for receipt of family support services, the responsible person shall agree, as a written part of the ISPP, to keep the client in the family home or the client's present residence. If the family becomes unable to meet this requirement while receiving family support services, the responsible person shall notify the case manager and request that the ISPP team reconvene within 30 days after notification for a review to determine if additional services will maintain the client in the client's present residence.
- D.** During the ISPP review specified in subsection (C), the ISPP team shall determine whether:
1. The division can provide additional supports;
  2. The division can refer the client or family to community services which will provide additional supports; or
  3. The provision of additional supports will not allow the family to meet the family support eligibility criteria prescribed in this Section.

**R6-6-203. Family Support Voucher**

- A.** If the ISPP team finds that a client and the client's family are eligible for family support, the ISPP team shall offer them the option of using family support vouchers to obtain services.
- B.** If the ISPP team and responsible person agree to use a family support voucher, the ISPP team shall list, in the ISPP, those services and supports for which the family may use the voucher.

**R6-6-204. Family Support Subsidy**

- A.** The ISPP team shall identify service needs for a client and family that can be met through a family support subsidy.
- B.** If the ISPP team and responsible person agree to use a family support subsidy, the ISPP team shall list, in the ISPP, those services or supports for which the family may use the family support subsidy.
- C.** Except as otherwise provided in subsection (L), a client and family shall use a family support subsidy only for the service or support identified in the ISPP.
- D.** The division may issue a family support subsidy to pay a portion of the cost of an identified service or support, with the family paying the remaining cost.
- E.** Each month, the family shall submit copies of receipts or written acknowledgment of payment for services or supports purchased with a family support subsidy to the client's case manager.
- F.** The division shall monitor the use of a family support subsidy by retaining and reconciling the receipts received from the family.

- G.** If the division finds that the documentation submitted pursuant to subsection (E) does not account for all subsidy funds, the case manager shall notify the family in writing.
- H.** The family shall contact their case manager within 30 days of receipt of a notice described in subsection (G).
- I.** If the family cannot provide additional documentation of all funds expended and reconcile the discrepancy, the division may require the family to reimburse the division for the amount in discrepancy.
- J.** If the family does not reimburse the division as required for the amount specified in the delinquency, the division shall send the account to the Department of Economic Security, Office of Accounts Receivable and Collections for collection.
- K.** Use of a family support subsidy for expenses other than those listed in the ISPP may result in the family being restricted in the use of any further family support subsidy until the family can demonstrate the ability to manage the funds as provided in the ISPP.
- L.** The responsible person shall notify the client's case manager if the need for a family support subsidy changes during the time for which it was issued. The responsible person may use the family support subsidy for an expense not specifically listed in the ISPP if the use is consistent with the ISPP and authorized, in writing, by the case manager.

**R6-6-205. Complaints**

The division shall handle all complaints regarding the family support program as described in R6-6-1513.

**R6-6-206. Pavor of Last Resort**

Prior to the use of division funds for the family support program, the division shall use all other sources of funding as prescribed in 6 A.A.C. 6, Article 13.

**R6-6-207. Withdrawal from Family Support Program**

- A.** A family may ask to withdraw from the family support program at any time.
- B.** The division shall withdraw a family from the family support program if the family becomes ineligible for the services.

**R6-6-208. Financial Reporting Requirements**

- A.** The division shall evaluate the family's financial resources as required by A.R.S. § 36-596.56. If the client or service is not covered by ALTCS, the division shall request the responsible person to answer the following questions during the ISPP process on a form provided by the division:
1. Are funds available from the family's resources to purchase the service?
  2. Is the family receiving any other federal, state, or governmental funds to provide the requested service?
  3. What portion of the costs can the client or family contribute for the requested service?
- B.** The ISPP team shall use the information provided pursuant to subsection (A) to determine the amount, if any, that the family should contribute for the cost of the service requested and the amount of the family support subsidy.
- C.** If, during the receipt of family support services, the family's financial circumstances change and the family cannot pay the portion agreed to as described in R6-6-204(D), the responsible person shall notify the case manager.

**R6-6-209. Right to Administrative Review**

A client or responsible person who disagrees with a division's decision may obtain an administrative review as prescribed in 6 A.A.C. 6, Article 18.

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### TITLE 8. EMERGENCY AND MILITARY AFFAIRS

#### CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

##### DIVISION OF EMERGENCY SERVICES

##### PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R8-2-33	Repeal
R8-2-34	Repeal
R8-2-35	Repeal
R8-2-36	Repeal
R8-2-37	Repeal
R8-2-38	Repeal
R8-2-39	Repeal
R8-2-301	New Section
R8-2-302	New Section
R8-2-303	New Section
R8-2-304	New Section
R8-2-305	New Section
R8-2-306	New Section
R8-2-307	New Section
R8-2-308	New Section
R8-2-309	New Section
R8-2-310	New Section
R8-2-311	New Section
R8-2-312	New Section
R8-2-313	New Section
R8-2-314	New Section
R8-2-315	New Section
R8-2-316	New Section
R8-2-317	New Section
R8-2-318	New Section
R8-2-319	New Section
R8-2-320	New Section
R8-2-321	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 26-102 and 26-306 in order to implement

Implementing statutes: A.R.S. §§ 26-303, 26-305, and 26-313, and is specifically mandated by A.R.S. §§ 35-192 and 35-192.01.

3. Name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Lynn Goss, Administrative Assistant I  
Address: ADEMA, Division of Emergency Management  
5636 East McDowell Road  
Phoenix, Arizona 85008  
Telephone: (602) 231-6266  
Fax: (602) 231-6356

4. An explanation of the rule, including the agency's reasons for initiating the rule:

The purpose of this rulemaking is to change the rules from an instructional layout to an accepted rule format and to renumber the criteria and procedure for administering the Governor's Emergency Fund.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small Business, and consumer impact:

The principal impact of these rules will be on the political subdivisions of disaster-affected communities. The new rules will provide a more concise system for the effected communities to obtain state and federal disaster assistance to protect life, preserve property, and restore public assets.

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For businesses, there will be no benefit as the Governor's Emergency Fund does not provide funds or assistance.

The Governor's Emergency Fund is not used to provide assistance to individuals; therefore, individuals are not directly affected.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Hugh Fowler, Assistant Director  
Address: ADEMA, Division of Emergency Management  
Disaster Field Office  
5030 South Mill, Suite C-5  
Tempe, Arizona 85282  
Telephone: (602) 831-8405  
Fax: (602) 831-8268

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No public proceeding is scheduled. A person may submit written comments to or request that an oral proceeding be held on the proposed rules by submitting the comments or a written request for hearing no later than 5 p.m., May 26, 1996, to the following person:

Name: Hugh Fowler, Assistant Director  
Address: ADEMA, Division of Emergency Management  
Disaster Field Office  
5030 South Mill Avenue, Suite C-30  
Tempe, Arizona 85282  
Telephone: (602) 831-8405  
Fax: (602) 831-8268

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.

10. Incorporation by reference and their location in the rules:  
None.

11. The full text of the rules follows:

TITLE 8. EMERGENCY AND MILITARY AFFAIRS

CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

DIVISION OF EMERGENCY SERVICES

ARTICLE 3. GOVERNOR'S EMERGENCY FUND

<u>R8-2-33.</u>	<u>General Provisions</u>
<u>R8-2-34.</u>	<u>Definitions</u>
<u>R8-2-35.</u>	<u>Designation of Fund Administrator</u>
<u>R8-2-36.</u>	<u>Application for Funds</u>
<u>R8-2-37.</u>	<u>Time Limit</u>
<u>R8-2-38.</u>	<u>General Criteria of Eligibility</u>
<u>R8-2-39.</u>	<u>Final Claim</u>
<u>R8-2-301.</u>	<u>Definitions</u>
<u>R8-2-302.</u>	<u>Applications for Emergency Assistance</u>
<u>R8-2-303.</u>	<u>Contents of an Application</u>
<u>R8-2-304.</u>	<u>Application by a Political Subdivision</u>
<u>R8-2-305.</u>	<u>Application by a State Agency</u>
<u>R8-2-306.</u>	<u>Action on an Application</u>
<u>R8-2-307.</u>	<u>Proclamation File Number</u>
<u>R8-2-308.</u>	<u>Limitation of Fund Expenditure</u>
<u>R8-2-309.</u>	<u>Time Limit for Filing Claims</u>
<u>R8-2-310.</u>	<u>Retention of Records</u>
<u>R8-2-311.</u>	<u>Establishment of the Incident Period and the Opening and Closing of the Proclamation</u>
<u>R8-2-312.</u>	<u>Duplication of Benefits</u>
<u>R8-2-313.</u>	<u>Allowable Claims against the Fund</u>

<u>R8-2-314.</u>	<u>Mitigation of Future Damages by the Applicant</u>
<u>R8-2-315.</u>	<u>Partial Payments and Advance of Funds</u>
<u>R8-2-316.</u>	<u>Final Inspection and Audit</u>
<u>R8-2-317.</u>	<u>Procurement Requirements</u>
<u>R8-2-318.</u>	<u>Inspection and Audit of Contract Provisions</u>
<u>R8-2-319.</u>	<u>Refund from an Applicant</u>
<u>R8-2-320.</u>	<u>Appeal of Director's Decision</u>
<u>R8-2-321.</u>	<u>Scope</u>
<u>R8-2-322.</u>	Reserved
<u>R8-2-323.</u>	Reserved
<u>R8-2-324.</u>	Reserved
<u>R8-2-325.</u>	Reserved
<u>R8-2-326.</u>	Reserved
<u>R8-2-327.</u>	Reserved
<u>R8-2-328.</u>	Reserved
<u>R8-2-329.</u>	Reserved
<u>R8-2-330.</u>	Reserved

ARTICLE 3. GOVERNOR'S EMERGENCY FUND

R8-2-33. General Provisions

A: Pursuant to A.R.S. § 35-192, which governs the "Governor's Emergency Fund", the Arizona State Legislature has indicated

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its intent to provide an orderly and continuing means of assistance to state agencies and local governments in carrying out their responsibilities to alleviate suffering and damage resulting from major disasters, and to repair essential public facilities damaged in major disasters.

- B. These rules and regulations describe the administration of the "Governor's Emergency Fund" and prescribe the procedures for submission of reimbursement requests by eligible claimants, in their efforts to combat the effects of a disaster, when a gubernatorial declaration of a state of emergency has been made. As such, these rules and regulations are designed to carry out the provisions of A.R.S. § 35-192(G), and supersede the rules and regulations dated August 31, 1977.

**R8-2-34. Definitions**

- A. "Governor's Emergency Fund" means the portion of the general fund used to pay incurred liabilities and expenses authorized as claims against the state to meet contingencies and emergencies when the Governor declares that a state of emergency exists.
- B. "Major disaster" means any flood, drought, fire, tornado, earthquake, storm, or other catastrophe in any part of the state of Arizona which, in the determination of the Governor, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance to supplement the facilities and funds available to state agencies and local governments in alleviating the damage, hardship, or suffering caused thereby.
- C. "State agency" means any department, commission, or other organizational element which has been designated as an official part of state government of Arizona by Arizona Revised Statutes.
- D. "Local government" means any county, city, town, village, district, including schools or other political subdivision of the state of Arizona established by law.
- E. "Director" means the Director of the Arizona Division of Emergency Services unless otherwise specified.

**R8-2-35. Designation of Fund Administrator**

The Director is responsible for administering the Governor's Emergency Fund. In this capacity, pursuant to Executive Order 79-4, the Director:

1. Shall disburse the funds and sign encumbrances, claims, and other pertinent documents and will maintain such records as are normally acceptable for audit purposes.
2. May, pursuant to state of Arizona procurement procedures, develop, negotiate, and consummate contracts or leases with individuals, institutions, or commercial agencies to prevent or minimize the loss of lives or property, to ease the suffering of disaster victims or to effect repairs, restoration, and other assistance to eligible applicants.
3. May employ necessary additional personnel by exempt appointment or individual contract to effect full recovery measures.
4. May, pursuant to state of Arizona procurement procedures, contract for the conduct of feasibility studies to analyze the adequacy of present personnel, procedures, and equipment to cope with disasters and for a determination of changes or additional resources that will be required.

**R8-2-36. Application for Funds**

- A. After the Governor declares the emergency and authorizes the incurring of liabilities, and when he has allocated a specified sum to meet the emergency or contingency in a particular political subdivision, funds may be advanced to the particular governmental entity:

- B. In the event a disaster reaches such proportion as to be beyond the control and resources of a county or city/town, it is the responsibility of the chairman of the board of supervisors to declare a "Local Emergency" within 10 days of the actual occurrence. (Sample "Resolution" included as Attachment 1.) At the time the "Local Emergency" declaration is made, the governing body of the affected political subdivision shall establish a procedure which will provide it the capability of maintaining separate accounts for all expenses incurred as a result of the disaster.

1. When the disaster area is confined to the corporate limits of the city or town, the mayor of that city or town should petition the chairman of the county board of supervisors for a local declaration.
2. The incorporated city or town having need for an advance of funds should channel its request through the chairman of the county board of supervisors to the Director.
3. In order to prevent any unnecessary delay, payment of an advance of funds will be made directly to the appropriate official of the political subdivision. An information copy of the covering transmittal letter will be sent to the chairman of the county board of supervisors.

- C. Simultaneous with the local declaration the chairman should request a proclamation of a "State of Emergency" by the Governor. This request should be channeled through the Director using the format shown as Attachment 2.

- D. In the event a state-owned facility only is involved, the primary state agency head should request the gubernatorial declaration by letter addressed to the Director. The letter should include the name and location of the affected facility, a description of the damages incurred and a preliminary estimate of the cost of repair or replacement.

- E. All requests for an advance of funds should come from the chairman of the concerned county board of supervisors to the Director by the most convenient means of communication. Such requests should state the specific purpose of the advance and provide some valid estimates of cost.

1. Advances will be based upon eligible expenditures to date and the estimated eligible expenditures for the next 60-day period.
2. In the event that an advance or any portion of an advance is deposited in a commercial bank account, any interest accrued and paid from that deposit will automatically revert to the state.

- F. Upon receipt of request cited above, the Director will prepare an appropriate claim form and agreement for the signature of the appropriate official of the political subdivision or head of state agency.

**R8-2-37. Time Limit**

All projects and accounts pertaining to an emergency or disaster must be completed within 1 year of the date of the Governor's declaration. Any extension of time beyond 1 year must be specifically authorized by the Director with the concurrence of the Governor. When the gubernatorial declaration is followed by a presidential declaration, the time limit is automatically extended 2 years from the date of the gubernatorial declaration.

**R8-2-38. General Criteria of Eligibility**

Only certain costs incurred in emergencies or in major disaster operations are eligible for funding from the Governor's Emergency Fund. The following paragraphs describe the specific items which are clearly eligible or clearly ineligible. Determinations on other items will be made within the framework of this guidance:

1. Salaries, wages, and administrative expenses
  - a. Eligible:
  - i. All salaries and wages of regular and extra

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- employees directly engaged in eligible disaster work, except as noted in (b) below:
- ii. ~~Overtime pay for regular employees must be the recorded policy of the applicant state agency or local government.~~
  - iii. ~~All communications charges directly related to disaster operations.~~
  - iv. ~~Travel beyond the limits of the political subdivision when directly related to disaster operations.~~
- b. ~~Ineligible:~~
- i. ~~Salaries and wages of regularly employed emergency services personnel, such as policemen, firemen, and other employees whose duties do not change because of the disaster.~~
  - ii. ~~When the Governor authorizes the mobilization of the National Guard, the Director will coordinate with the Adjutant General as to the mission requirements and funding availability. The Adjutant General will issue orders giving tactical and administrative instructions, and defining the objectives to be accomplished. Cost of the mobilization may include wages, P & A, travel, rations issued or in kind, miscellaneous items required to accomplish the mission, cost for operation, maintenance, repair or replacement of U.S. Government property on loan to the National Guard of Arizona and/or state-owned property. The Director shall provide for payment of expenses incurred by the National Guard during emergency mobilization by providing the Division of Military Affairs a Certificate of Availability of Funds to be allocated the National Guard. A certificate of the Adjutant General, in addition to an itemized statement, that the expenses are necessary and were actually made in the emergency will be provided.~~
  - iii. ~~Salaries and wages of elected or appointed officials who are responsible for directing regular governmental activities.~~
  - iv. ~~Office supplies and equipment.~~
  - v. ~~Rental of administrative office space.~~
2. ~~Equipment, supplies, and materials~~
- a. ~~Eligible:~~
- i. ~~Cost of materials and supplies consumed, lost, damaged, or destroyed in eligible disaster work, including those procured by direct purchase or taken from applicant's stock.~~
  - ii. ~~Rental costs of privately owned equipment used in performing eligible disaster work, provided that the rates do not exceed the lowest rates locally available for the same or similar equipment. (See also 2(a)(iii))~~
  - iii. ~~Contributions toward the purchase of equipment, provided that necessary equipment is not available on a loan basis from federal, state, or local sources. Such contributions shall be funded only in the amounts agreed upon between the acquiring state agency or local government and the Director, and shall not exceed:~~
    - (1) ~~Estimated rental costs of the item at prevailing local rates for the period of use; or~~
    - (2) ~~The difference between the purchase price and the depreciated value existing upon~~
- termination of the disaster work. Depreciation value will be established by depreciation schedules regularly used for such equipment.
- iv. ~~Actual costs incurred in the operation of applicant-owned equipment in eligible disaster work, including fuel, lubricants, tires, and other operating costs of a similar nature.~~
  - v. ~~Repairs (labor and supplies) necessary for the operation of applicant-owned equipment in eligible disaster work. Repairs must be necessitated by damage to equipment during disaster operations.~~
  - vi. ~~Costs of hand tools, personal equipment, and protective equipment when determined that procurement is essential for the protection of life, health and property.~~
- b. ~~Ineligible:~~
- i. ~~Charges for depreciation, insurance, storage, and similar fixed overhead costs.~~
  - ii. ~~Costs of repair or replacement of materials, equipment, and supplies lost or damaged during a disaster, other than in performance of eligible disaster work, except where such material, equipment, and supplies are components of a facility, operation of which is essential to health, safety, or welfare.~~
  - iii. ~~Repairs and fuel for privately owned rented equipment, except where the rental agreement provides that the applicant will be responsible for such repair and fuel in addition to the rental.~~
  - iv. ~~Costs of transportation and personal equipment utilized by police and other employees whose duties do not change because of the disaster.~~
3. ~~Work performed under contract~~
- a. ~~Eligible:~~
- i. ~~Costs of work performed by private contractors on eligible projects.~~
  - ii. ~~Costs of work performed under contractual agreement between local governments or between a local government and a state agency, but limited to actual costs. Actual costs must be completely documented by the local government or state agency performing such work.~~
- b. ~~Ineligible:~~
- i. ~~Costs of work performed under contractual agreement between a state agency or local government and a federal agency where such work is funded by federal funds.~~
  - ii. ~~Costs incurred under contracts based on cost plus a percentage of costs, except where performance of immediate emergency work would be unduly delayed and where such delay would extend or create a hazard to health or safety. Requests for exceptions to this rule must be fully justified and will be considered on an individual case basis.~~
4. ~~Prison labor~~
- a. ~~Eligible:~~ Out of pocket costs to an eligible applicant of prison labor performing eligible disaster work, including the amount paid the prisoner in accordance with rates established prior to the disaster, and the cost of transportation.
- b. ~~Ineligible:~~ Costs of food, lodging, and guards. Also, any costs of prison labor utilized by a contractor.



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5. ~~Other. To be used only for eligible items which cannot be classified by the above categories. Each entry must be fully explained and will be considered on a individual case basis.~~
6. ~~Limitations. The cost of repair and replacement of public facilities from the Governor's Emergency Fund will be limited to pre-disaster standards and design. The elimination of a disaster caused health hazard on private property may be authorized when supported by certification from a qualified public health official. Normal recurring costs such as road and street maintenance are not eligible.~~

**R8-2-39: Final Claim**

- A:** ~~When authorized projects for the repair or reconstruction caused by the disaster have been completed, the political subdivision which received an advance of funds must file a final report and claim with the Director.~~
1. ~~A political subdivision which does not apply for an advance of funds will submit a final report.~~

2. ~~Complete documentation of all expenditures in the form of copies of paid vouchers, payrolls, contracts, agreements, receipts, and similar documents must be included with the final report.~~
3. ~~Funds advanced by the state to a political subdivision which are not expended for the specified purpose will be refunded to the state at the time of the final report.~~
- B:** ~~Upon receipt of the final report, the Director will arrange for a field audit to be made by the Arizona Division of Emergency Services of the political subdivision's records covering all costs necessary to complete the approved work.~~
  1. ~~This audit will be the basis for the final reimbursement to the political subdivision.~~
  2. ~~Final reimbursement will be the costs incurred to complete necessary repairs and reconstruction, less the amount advanced as a result of the original request.~~
- C:** ~~Upon completion of the audit, the Director will prepare a final claim for the signature of the appropriate official of the political subdivision.~~

**SAMPLE**

**COUNTY EMERGENCY RESOLUTION — Attachment 1**

~~WHEREAS, the unusually strong earthquake of \_\_\_\_\_, 19\_\_\_\_, and the fires therefrom have caused death of persons and extensive damage or destruction to private property and to the many public facilities, streets, and road of \_\_\_\_\_ County; and~~

~~WHEREAS, the earthquake has resulted in a condition of extreme peril to the health and safety of many citizens; and~~

~~WHEREAS, the Chairman of the Board of Supervisors of \_\_\_\_\_ County is authorized by resolution of the Board of Supervisors to declare a local emergency;~~

~~NOW, THEREFORE, it is hereby declared that an emergency now exists in \_\_\_\_\_ County; and~~

~~Mutual aid from the Cities of \_\_\_\_\_ and \_\_\_\_\_ is hereby requested; and~~

~~It is further ordered that during the existence of said emergency, local government agencies assigned emergency roles in the \_\_\_\_\_ County Emergency Plan are an Emergency Organization and the County of \_\_\_\_\_ Emergency Plan is hereby activated and in effect until further notice.~~

~~Dated: \_\_\_\_\_ Chairman of the Board of Supervisors~~

~~\_\_\_\_\_ County~~

~~\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_~~

~~Attest:~~

**SAMPLE**

**APPLICATION FOR GOVERNOR'S DISASTER PROCLAMATION — Attachment 2**

The honorable \_\_\_\_\_

Governor, State of Arizona

State Capitol

Phoenix, Arizona 85007

Dear Governor \_\_\_\_\_:

1. ~~A disaster situation exists in \_\_\_\_\_ (political subdivision) due to \_\_\_\_\_ (detailed explanation of circumstances)~~
2. ~~Unless remedial action is taken to correct the present conditions, results will be as follows:~~

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- a. (Include statement of manner in which persons and property  
b. ~~will be affected;~~ number of people affected; economic impact;  
c. Potential health hazards, etc.)
3. Action has already been taken by the government of \_\_\_\_\_ to meet the emergency at a cost of \$ \_\_\_\_\_. These expenditures have accomplished the following:
- a.  
b.  
c.
4. The additional funds required to accomplish minimum essential work are estimated to be \$ \_\_\_\_\_. The additional funds will permit the following projects to be completed:
- a. \$ \_\_\_\_\_  
b. \$ \_\_\_\_\_  
c. \$ \_\_\_\_\_
5. Possible alternate solutions or temporary expediences could be accomplished for approximately \$ \_\_\_\_\_. These would consist of the following projects:
- a. \$ \_\_\_\_\_  
b. \$ \_\_\_\_\_  
c. \$ \_\_\_\_\_
6. (Statement of availability of funds in political subdivision for emergency work. Attach affidavit executed by appropriate official of political subdivision.)
7. It is respectfully requested that you issue a proclamation declaring that a state of emergency exists in under provisions of A.R.S. § 35-192, and authorize funds in the amount of \$ \_\_\_\_\_ to be expended to alleviate the condition.
- /s/ \_\_\_\_\_ (officials of political subdivision)

Attachments: (as appropriate)

Maps

Affidavits

Engineering data

Etc.

**R8-2-301. Definitions**

In addition to the definitions provided in A.R.S. § 26-301, the following definitions apply to this Article, unless specified otherwise:

1. "Applicant" means any state agency or political subdivision of the state that requests emergency assistance from the state.
2. "Applicant's authorized representative" means the person authorized by the governing body of a political subdivision to request funds, time extensions, and attend to other recovery matters related to a specific emergency proclamation.
3. "Application" means a written or verbal request by an applicant to the director for emergency assistance.
4. "Contingency proclamation" means the document in which the governor authorizes the director to pay expenses incurred by political subdivisions or state agencies that respond to frequently occurring emergencies that pose a significant and constant threat such as search or rescue and hazardous material spills.
5. "County" means the county or counties where the disaster is located.
6. "Department" means the Department of Emergency and Military Affairs provided in A.R.S. § 26-101.
7. "Emergency" means any occasion or instance for which, in the determination of the governor, state assistance is needed to supplement state agencies' and political subdivisions' efforts and capabilities to save lives, protect property, and public health and safety, or to lessen or avert the threat of a disaster in Arizona.
8. "Emergency resolution" means a document by which the governing body of the political subdivision declares an emergency.
9. "Fund" means the portion of the general fund used to pay incurred liabilities and expenses authorized as claims against the state to meet contingencies and emergencies when the governor declares that a state of emergency exists.
10. "Incident period" means the time interval of an emergency event during which damage occurs.
11. "Political subdivision" means any county, incorporated city or town, or school, community college, or other tax levying public improvement district.
12. "Proclamation" means the document in which the governor declares that a state of emergency exists pursuant to A.R.S. § 35-192(A) and authorizes an expenditure from the fund.

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13. "State" means the state of Arizona.

14. "State agency" means any department, commission, board, agency, or division of the state, including the Department of Emergency and Military Affairs.

**R8-2-302. Applications for Emergency Assistance**

An applicant shall act for the purpose of this Article through its chief executive officer or body, or an authorized representative of the chief executive officer.

**R8-2-303. Contents of an Application**

- A. An application shall include the cause, location, beginning date, a description of the damage caused by the emergency, and potential health hazards arising from the emergency, the costs incurred for emergency response, and an estimate of the number of people affected by the emergency and costs for recovery.
- B. Before submitting an application to the director, the applicant shall apply its available resources and request assistance from other political subdivisions that might respond to the emergency.

**R8-2-304. Application by a Political Subdivision**

- A. A county shall issue an emergency resolution before submitting an application to the director.
- B. A political subdivision other than a county shall submit an emergency resolution to the county and request that, if necessary, the county issue an emergency resolution and make application to the director. If the county fails to issue an emergency resolution expeditiously, a political subdivision may apply directly to the director for assistance.
- C. An application shall be submitted to the director using the most expeditious means.
- D. The director shall reject an application that is not received within 15 days from the start of the emergency unless the political subdivision shows good cause for the delay or that the emergency is of a type that the date the emergency started is difficult to establish.

**R8-2-305. Application by a State Agency**

An applicant that is a state agency shall submit an application directly to the director.

**R8-2-306. Action on an Application**

- A. The director shall make a recommendation to the governor whether to issue a proclamation.
- B. The director shall notify the applicant immediately by telephone or, if necessary, in writing, of the governor's decision to issue or not to issue a proclamation. If the governor issues a proclamation, the division shall forward a copy to the applicant.
- C. The governor shall prescribe in the governor's proclamation the amount for which the state will be liable.
- D. State payment of claims submitted by a political subdivision pursuant to a proclamation shall not exceed 75% of eligible costs or the amount prescribed in the proclamation, whichever is less.

**R8-2-307. Proclamation File Number**

- A. The division shall assign a file number to each emergency.
- B. All correspondence regarding the emergency shall reference the file number.

**R8-2-308. Limitation of Fund Expenditure**

Expenditure from the fund as a result of a particular proclamation shall not exceed the amount authorized in the proclamation unless an additional amount is authorized by the council as prescribed in A.R.S. § 35-192.

**R8-2-309. Time Limit for Filing Claims**

Before expiration of the governor's proclamation, the director shall assess whether an extension of time is needed for an applicant to complete work and submit claims arising from an emergency. If the director determines an extension of time is needed, the director shall recommend that the governor grant an extension.

**R8-2-310. Retention of Records**

The applicant shall maintain for 5 years all records relating to claims submitted by the applicant in accordance with A.R.S. § 41-1346 and shall make the records available for inspection and audit by the department auditor and the auditor general.

**R8-2-311. Establishment of the Incident Period and the Opening and Closing of the Proclamation**

- A. The director shall recommend to the governor, for inclusion in the governor's proclamation, the beginning and ending dates of the incident period. If the director determines that the incident period has a beginning or ending date different from the stated in the proclamation, the director shall recommend to the governor that the proclamation be amended to reflect the correct dates.
- B. At the director's recommendation, the governor shall terminate the proclamation when the following occur:
  1. The recovery work is complete.
  2. The division completes a final inspection of all work for which the applicant submits a claim.
  3. The applicant submits a claim to the director for all work for which the applicant seeks reimbursement.
  4. The division pays all authorized claims.
  5. The required audits are complete.
  6. The applicant receives amount due or pays amount owed.
- C. The director shall recommend to the governor beginning and ending dates of the governor's proclamation.
- D. The governor shall issue a closing proclamation to establish an ending date for the governor's proclamation.

**R8-2-312. Duplication of Benefits**

- A. The state is not liable for any claim arising from an emergency for which the applicant receives funds from another source.
- B. The state is not liable for any claim arising from an emergency unless the applicant applies for and is denied funding from other available sources before submitting the claim to the state.
- C. If the director determines that an applicant received duplicate funds for a claim from the state and from another source, the applicant shall refund the amount received from the state.

**R8-2-313. Allowable Claims Against the Fund**

- A. The director shall allow expenditures from the fund for a claim arising from an emergency only if:
  1. The amount claimed is a direct result of response or recovery operations to an emergency;
  2. The applicant is legally responsible for providing response or recovery operations in the emergency; and
  3. The amount claimed is authorized under the provisions of subsection (B) or (D).
- B. The director shall allow the following costs to be paid as claims against the fund:
  1. Salaries or wages and benefits of the applicant's budgeted personnel directly engaged in eligible work;
  2. Salaries or wages and benefits of nonbudgeted employees directly engaged in eligible work;
  3. Communications;
  4. Travel;

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5. Materials and supplies consumed, lost, damaged, or destroyed, including those procured by direct purchase or taken from the applicant's stock;
  6. Rental of privately owned equipment at documented contractual rates;
  7. Contributions toward the purchase of equipment if the necessary equipment is not available from federal, state, or local sources, and if the contribution does not exceed the cost of renting the item at prevailing local rates;
  8. Owning and operating the applicant's equipment using rates approved by the director;
  9. Work performed by private contractors;
  10. Work performed under an agreement between local governments or between a local government and a state agency, which are completely documented by the local government or state agency performing such work; and
  11. Prison labor including amounts paid to prisoners in accordance with established rates and costs of transporting prisoners.
- C. The director shall not allow the following costs to be paid as claims against the fund:
1. Salaries or wages and benefits of elected or appointed officials responsible for directing governmental activities;
  2. Office supplies and equipment;
  3. Rental of administrative office space;
  4. Depreciation, insurance, storage, and similar fixed overhead costs;
  5. Repairs and fuel for privately owned rented equipment, except where the rental agreement provides that the applicant will be responsible for repairs and fuel in addition to the rental fee;
  6. Work performed under agreement between a state agency or local government and a federal agency where the work is paid for by federal funds;
  7. Costs incurred under contracts based on cost plus a percentage of costs, unless the director determines that the performance of immediate emergency work would be unduly delayed and would likely result in an imminent hazard to health or safety, in which case the director may authorize exceptions on an individual basis; and
  8. Prison labor costs for food, lodging, and guards.
- D. To submit a claim for a cost that cannot be classified under subsection (B) or (C), an applicant shall make a written request to the director for an exception. The director shall grant a request for an exception if the request explains the nature of the exception and justifies why it is needed. The director shall immediately inform the applicant in writing of the decision to grant or deny the request for an exception.
- E. When a facility damaged as a result of an emergency is repaired or replaced, the director shall allow only the costs required to return the facility to the condition it was before the emergency, incorporating current standards and design requirements.

**R8-2-314. Mitigation of Future Damages by the Applicant**  
The applicant shall comply with any mitigation requirements specified by the director for repair or replacement projects subject to repeated damage from flooding or other threats to life or property.

**R8-2-315. Partial Payments and Advance of Funds**  
All requests for an advance of funds shall be signed by the applicant's authorized representative and forwarded to the director. Advances will be based upon eligible expenditures to date and the estimated eligible expenditures for the next 60-day period.

**R8-2-316. Final Inspection and Audit**  
Upon completion of all work by an applicant, the division shall inspect all the work that the applicant claims. The applicant shall provide the division with access to all claimed work and shall permit review of all records relating to the work. After completion of the final inspection, the department's chief auditor shall conduct an audit of the applicant's claims. The director shall use this audit to determine the allowability of claimed costs and final payment due the applicant or overpayment due the division.

**R8-2-317. Procurement Requirements**  
The director shall not allow a claim arising from a procurement unless the applicant complies with the Arizona procurement laws set forth in A.R.S. § 41-2501, et seq., and the R2-7-101, et seq.

**R8-2-318. Inspection and Audit of Contract Provisions**  
If a contract or subcontract for the furnishing of goods, equipment, labor, materials, or services to the applicant may result in a claim, the applicant shall include in the contract or subcontract a provision that all books, accounts, reports, and other records relating to the contract or subcontract shall be subject to inspection and audit by the state for 5 years after completion of the contract or subcontract.

**R8-2-319. Refund from an Applicant**  
**A.** If the director determines that an applicant is required to refund an amount, the director shall provide the applicant written notice of the amount owed. The applicant shall reimburse the division within 2 months of the date of notification.  
**B.** The applicant may request a review, as set forth in R8-2-320, questioning the amount due. If the review results in a decision that the applicant is required to reimburse the division, the applicant shall refund the amount required within 2 months of the decision.

**R8-2-320. Appeal of Director's Decision**  
**A.** Any party aggrieved by a decision rendered by the director may request, in writing, an appeal not later than 15 days after receipt of the director's decision.  
**B.** The director will contact the clerk of the administrative court to schedule the case with the Office of Administrative Hearing judge in accordance with A.R.S. § 41-1092.02.

**R8-2-321. Scope**  
Provisions of this Article do not apply to contingencies arising from search and rescue incidents.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 2. ARIZONA RACING COMMISSION**

**PREAMBLE**

1. **Sections Affected**  
R19-2-121
- Rulemaking Action**  
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 5-104(A)(2)  
Implementing statute: A.R.S. § 5-107.01(B)
3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**  
Name: William J. Walsh  
Address: Department of Racing  
15 South 15th Avenue, Suite 100  
Phoenix, Arizona 85007  
Telephone: (602) 542-5151  
Fax: (602) 542-5177
4. **An explanation of the rule, including the agency's reason for initiating the rule:**  
The amended rule strikes the position of announcer from the list of track officials. The rule change was initiated at the request of some of the state's racetracks. The Department does not believe that the announcers at the racetracks need to be included as track officials although the individuals filling those positions will still be licensed by the Department as are all other track employees.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
None.
6. **The preliminary summary of the economic, small business, and consumer impact:**  
None.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**  
Name: William J. Walsh  
Address: Department of Racing  
15 South 15th Avenue  
Phoenix, Arizona 85007  
Telephone: (602) 542-5151  
Fax: (602) 542-5177
8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**  
No oral proceedings are scheduled. Contact the person listed above to request one. At least 5 requests need to be submitted within the 30 days following publication of the proposed rulemaking in order to schedule an oral proceeding.
9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
None.
10. **Incorporations by reference and their location in the rules:**  
None.
11. **The full text of the rules follows:**

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**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 2. ARIZONA RACING COMMISSION**

**ARTICLE 1. HORSE RACING**

Section

R19-2-121. Officials

**ARTICLE 1. HORSE RACING**

**R19-2-121. Officials**

**A. Generally**

1. The term "track official" shall apply to the following persons employed by the permittee and approved and licensed by the Department: Director of Racing, 1 steward, mutuel manager, patrol judges, clerk of the scales, starter, timer, paddock judge, track veterinarian, track superintendent, ~~announcer~~, racing secretary, assistant racing secretary, handicapper, horseman's bookkeeper, jockey room custodian, and chief of security.

2. No change.
3. No change.
4. No change.
5. No change.
  - a. No change.
  - b. No change.
  - c. No change.

6. No change.
7. No change.

**B. No change.**

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.

**C. No change.**

**D. No change.**

1. No change.
2. No change.
3. No change.

**E. No change.**

1. No change.
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  - c. No change.
2. No change.
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- d. No change.
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- g. No change.
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- i. No change.
- j. No change.
- k. No change.

**7. No change.**

**F. No change.**

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  - b. No change.
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  - b. No change.
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  - a. No change.
  - b. No change.
  - c. No change.
6. No change.
7. No change.
8. No change.

**G. No change.**

**H. No change.**

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  - c. No change.
2. No change.
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**I. No change.**

1. No change.
2. No change.

**J. No change.**

1. No change.
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  - b. No change.
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  - d. No change.
  - e. No change.
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3. No change.
4. No change.

**K. No change.**

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  - c. No change.

**L. No change.**

1. No change.
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3. No change.

**M. No change.**

1. No change.
2. No change.

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- 3. No change.
- N. No change.
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- P. No change.
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    - ii. No change.
    - iii. No change.
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  - d. No change.
  - e. No change.
  - f. No change.
- 8. No change.
- Q. No change.
  - 1. No change.
  - 2. No change.
  - 3. No change.